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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,598	06/03/2005	Andreas Meisel	BB-117	1867

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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950

EXAMINER

HUYNH, CARLIC K

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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12/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/506,598

Applicant(s)

MEISEL ET AL.

Examiner

Carlic K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-18 and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>13 January 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

1. Claims 15-32 are pending in the application, with claims 26-32 having been withdrawn, in response to the restriction requirement submitted on September 4, 2007. Accordingly, claims 15-25 are being examined on the merits herein.

Election/Restrictions

2. Applicant's election of the claims of Group I, namely claims 15-25, in the reply filed on September 28, 2007 is acknowledged. Because Applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 26-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on September 28, 2007.

3. Applicants' election of: (1) moxifloxacin as the anti-infective agent; and (2) IFN- γ as the immunomodulating agent, in the reply filed on September 28, 2007 is acknowledged. Because Applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 19 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on September 28, 2007.

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Accordingly, claims 15-18 and 20-25 are examined on the merits herein.

The election/restriction requirement is deemed proper and is made FINAL.

Information Disclosure Statement

4. The Information Disclosure Statement submitted on January 13, 2005, is acknowledged.

Oath/Declaration

5. It does not identify the citizenship of each inventor. Regarding the citizenship of the sixth named inventor, Hans Dieter Volk, "German" is not a proper country but is rather a language. Appropriate correction is required.

Drawings

6. The drawings are objected to because the language of figures 1, 3, and 4 is in a foreign language. However, it is noted that the legends for figures 1, 3, and 4 are in English. Appropriate correction or translation to English is required. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 15-18 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fong (The Journal of Infectious Diseases, 2000, Vol. 181, Suppl. 3, pp. S514-S518 as cited in the IDS) in view of Vlasselaer et al. (US 2001/0043906).

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Fong teaches a method of treating infection of *Chlamydia pneumoniae* comprising administering moxiflacin (abstract). Fong further teaches that *C. pneumoniae* infection is a complication of stroke (abstract). Thus Fong teaches a method of treating *C. pneumoniae* infection after a stroke. The work of Fong was done in animal models, particularly mouse, rabbit, and non-human primates (page S514).

Fong does not teach INF- γ .

Vlasselaer et al. teach a method for treating bacterial pneumonia in patients comprising administering INF- γ (abstract; and page 6, paragraph [0081]). It would be obvious that "patient" encompasses to humans and thus it would be obvious the method of Vlasselaer et al. applies to humans. Moreover, it would be obvious that bacterial pneumonia may be caused by infection with *C. pneumoniae* since it is well known that pneumonia is caused by many different organisms including different bacteria.

Accordingly, absence the showing of unexpected results, it would have been obvious to a person of skill in the art at the time of the invention to employ the compounds of Fong to contain INF- γ because the compounds of Vlasselaer et al. teach INF- γ and according to Vlasselaer et al., INF- γ can be used to treat bacterial pneumonia.

The motivation to combine the compounds of Fong to the compounds of Vlasselaer et al. is that compounds of Vlasselaer et al. are INF- γ compositions and that such compositions can be used to treat bacterial pneumonia.

It is noted that "It is obvious to combine individual compositions taught to have the same utility to form a new composition for the very same purpose" and "It is obvious to combine two compositions taught by the prior art to be useful for the same purpose to form a third

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composition that is to be used for the very same purpose". *In re Kerkhoven*, 626 F.2d 846, 205 U.S.P.Q. 1069 (C.C.P.A. 1980).


Conclusion

8. No claims are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlic K. Huynh whose telephone number is 571-272-5574. The examiner can normally be reached on Monday to Friday, 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


SHENGJUN WANG
PRIMARY EXAMINER

ckh